

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:23-cr-00165-SNLJ
	)	
TYRONE DEVARIAE ALSTON,	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on defendant's motion to dismiss the indictment based on the claim that the charged offense – receiving a firearm while under indictment for felony offenses in violation of 18 U.S.C. § 922(n) – is unconstitutional, both facially and as applied (Doc. 33). After extended briefing on whether the statute violates the Second Amendment under the *Bruen* case and its progeny, Magistrate Judge John Bodenhausen<sup>1</sup> issued a Report and Recommendation recommending the motion be denied (Doc. 51). Defendant filed objections to the Report and Recommendation (Doc. 52) and the government filed a response to the objections (Doc. 53).

This Court's review of the Report and Recommendation is governed by 28 U.S.C. § 636 and Federal Rule of Civil Procedure 72. When a party objects to a report and recommendation, the district judge must conduct "a de novo determination of those portions of the report or specified proposed findings or recommendations to which

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(b) and Local Rule 2.08, all pretrial matters were referred to United States Magistrate Judge John Bodenhausen (Doc. 4).

objection is made.” *United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003) (quoting 28 U.S.C. § 636(b)(1)). The district judge may then “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1); *see also United States v. Craft*, 30 F.3d 1044, 1045 (8th Cir. 1994).


After full review of the record and briefing, this Court adopts, sustains, and incorporates herein the thorough and well-reasoned Report and Recommendation in its entirety and overrules defendant’s objections thereto.

Accordingly,

**IT IS HEREBY ORDERED** that the Report and Recommendation of United States Magistrate Judge John Bodenhausen (Doc. 51), filed August 21, 2024 is **SUSTAINED**, **ADOPTED**, and **INCORPORATED** herein.

**IT IS FURTHER ORDERED** that Defendant’s Motion to Dismiss the Indictment (Doc. 33) is **DENIED**.

Dated this 11th day of September, 2024.

  
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STEPHEN N. LIMBAUGH, JR.  
SENIOR UNITED STATES DISTRICT JUDGE